

**UNITED STATES DISTRICT COURT
District of New Mexico**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Number: 05-1849 JH
)
RAFAL MISTRZAK and)
MELANIA KIRWIN,)
)
Defendants.)

**MOTION TO SET HEARING TO DETERMINE
WHETHER THERE IS A CONFLICT OF INTEREST**

COMES NOW, Rafal Mistrzak, by and through his counsel of record and Melania Kirwin by and through her proposed counsel of record and hereby moves this Court to set a hearing to determine if there is a conflict if Attorney, Rudolph B. Chavez represents the aforementioned Defendants and as grounds STATES:

1. Attorney Rudolph B. Chavez entered his appearance in Defendant, Rafal Mistrzak on May 17, 2006.
2. Attorney Rudolph B. Chavez entered his appearance in Defendant, Melania Kirwin on February 14, 2008, which was granted on May 20, 2008, then rescinded on May 28, 2008. Defendant, Melania Kirwin retained Mr. Chavez for the purpose of sentencing in this case.
3. Defendant, Rafal Mistrzak does not believe there is a conflict of interest.
4. Defendant, Melania Kirwin does not have an attorney/client relationship with her

current attorney, John F. Samore which is why Defendant retained another attorney.

5. Defendant, Melania Kirwin does not believe there is a conflict of interest.
6. Concurrence was sought from United States Attorney, James Braun, who had no opposition.

WHEREFORE Defendants, Rafal Mistrzak and, Melanie Kirwin prays this Court will set a hearing to determine if there is a conflict of interest for Attorney Rudolph B. Chavez to represent them in the above referenced cause of action.

Respectfully Submitted,

s/submitted electronically

RUDOLPH B. CHAVEZ

Attorney for Defendant

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I hereby certify that a true and correct copy of the foregoing was mailed to all parties of record this 16th day of June, 2008.

s/submitted electronically

RUDOLPH B. CHAVEZ